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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,037	08/16/2006	Laurent Delmotte	4004-75	2565
30448 7590 03/05/2009 AKERMAN SENTERFITT P.O. BOX 3188 WEST PALM BEACH, FL 33402-3188				
EXAMINER				
JOLDEN, ELIZABETH A				
ART UNIT		PAPER NUMBER		
1793				
MAIL DATE		DELIVERY MODE		
03/05/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,037

Applicant(s)

DELMOTTE ET AL.

Examiner

ELIZABETH A. BOLDEN

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date 2/13/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The IDS submitted 2 June 2008 has been considered by the Examiner.

Claim Rejections - 35 USC § 102 and 35 USC § 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dupont et al., U.S. Patent 5,877,103.

Dupont et al. disclose a glass having overlapping ranges of the components as recited in claims 1-11. See Abstract and column 1, lines 16-28 and column 3, lines 30-38. The compositional ranges of Dupont et al. are sufficiently specific to anticipate the glass as recited in claims 1-11. See MPEP 2131.03.

SiO ₂	63 to 75%
Na ₂ O	10 to 20%
CaO	0 to 15%
K ₂ O	0 to 10%
MgO	0 to 10%
Al ₂ O ₃	0 to 5%
BaO	0 to 3%
BaO + CaO + MgO	10 to 20%
K ₂ O + Na ₂ O	10 to 20%

Fe ₂ O ₃	0.75 to 1.80%
Co	0.0040 to 0.0180%
Se	0.0003 to 0.0040%
Cr ₂ O ₃	0.0010 to 0.0100%

Dupont et al. disclose TE4 which anticipates the TE4 and a selectivity of claim 1 and 11. See Abstract and column 3, lines 39-43.

However, Dupont et al. does not disclose any examples that anticipate claims 1-11. Dupont et al. does not teach the LTA4 as claimed in claims 1 and 10.

Therefore, in the alternative to the § 102 rejection the reference discloses a composition that has overlapping ranges of components with the instant claimed glass, and overlapping ranges have been held to establish *prima facie* obviousness. See MPEP 2144.05. The claims are considered anticipated or in the alternative the subject matter as a whole would have been obvious to one having ordinary skill in the art at the time of the invention to have selected the overlapping portion of the range disclosed by the prior art because overlapping ranges have been held to be a *prima facie* case of obvious, see *In re Malagari*, 182 U.S.P.Q 549.

One of ordinary skill in the art would expect that a glass with overlapping compositional ranges would have the properties recited in claims 1 and 10. Products of identical composition may not have mutually exclusive properties. *In re Spada* 15 USPQ2d 1655,1658 (Fed. Circ. 1990).

Conclusion

The additional references cited on the 892 have been cited as art of interest since they are considered to be cumulative to or less than the art relied upon in the rejections above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH A. BOLDEN whose telephone number is (571)272-1363. The examiner can normally be reached on 10 am to 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Elizabeth A. Bolden
/Elizabeth A. Bolden/
Examiner
Art Unit 1793

EAB
1 March 2009

/Karl E Group/
Primary Examiner, Art Unit 1793